

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD HAYDUK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (x) 22 of the
Tax Law for the Year(s) ~~xxx Period(s)~~
1972 and 1973.

State of New York
County of Albany

Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Richard Hayduk

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Richard Hayduk
188 North Field Avenue
Dobbs Ferry, New York 10522

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ ~~xxxxxx~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

24th day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

August 24, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Mr. Richard Hayduk
188 North Field Avenue
Dobbs Ferry, New York 10522

Dear Mr. Hayduk:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(b)~~ **690** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty
Hearing Examiner

cc: ~~Personnel's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
RICHARD HAYDUK
for Redetermination of a Deficiency or
for Refund of Personal Income Taxes
under Article 22 of the Tax Law for the
Years 1972 and 1973.

DECISION

Petitioner, Richard Hayduk, residing at 188 North Field Avenue, Dobbs Ferry, New York 10522, has filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1972 and 1973. (File No. 10779).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on February 23, 1977 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Andrew Haber, Esq. of counsel).

ISSUES

I. Whether the petitioner, Richard Hayduk, is subject to a penalty for willful failure to collect and pay over withholding taxes, pursuant to section 685(g) of the Tax Law.

II. Whether the withholding taxes due from Techno Dry Cleaners, Incorporated and Techno Processing Industry, Incorporated for the years 1972 and 1973 have been paid.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Richard Hayduk, was the secretary and treasurer of the above said firms, for the years 1972 and 1973. He signed the monthly and semiannual employer's returns for personal income tax withheld by said firms.

2. The petitioner, Richard Hayduk, was an administrative officer of both Techno Dry Cleaners, Inc. and Techno Processing Industry, Inc. He had a one-third stock ownership in said firms and had authority to hire and fire employees.

3. Techno Dry Cleaners, Incorporated and Techno Processing Industry, Incorporated each filed bankruptcy during the year 1973.

4. The petitioner, Richard Hayduk, contends that the withholding taxes due from said firms were paid, but due to a burglary the firms' records were not available and he could not submit the cancelled checks or receipts.

5. The petitioner, Richard Hayduk, was a responsible person required to collect, truthfully account for and pay over New York State withholding taxes due from said firms for

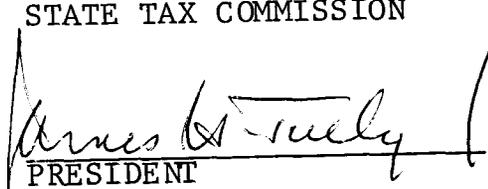
the years 1972 and 1973 in accordance with the meaning and intent of sections 685(g) and 685(n) of the Tax Law.

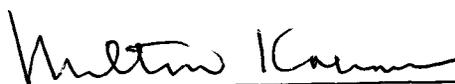
6. The petitioner, Richard Hayduk, has not sustained the burden of proof necessary to substantiate that the New York State withholding taxes due from said firms had been paid.

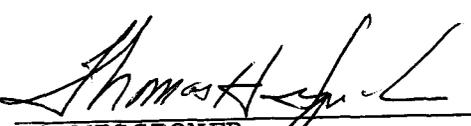
7. The petition of Richard Hayduk is denied and the notices of deficiency in the sums of \$2,140.34 and \$430.60, respectively issued on October 27, 1975 are sustained.

DATED: Albany, New York
August 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER